

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 950 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

DIGVIJAY CEMENT COMPANY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR KM PATEL for Petitioners
MR KT DAVE, A.P.P. for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of Order: 03/08/98

ORAL JUDGMENT

This is an application with a prayer to quash proceedings pending in the court of learned Chief

Judicial Magistrate, Ahmedabad (Rural) at Mirzapur in Criminal Case No. 142/97.

2. The short facts leading to the case are as under:-

3. The Cement Manufacturers Association ('CMA' for short) had entered into a settlement with several labour unions on 12th July 1996. A memorandum of settlement arrived at amongst the parties is at page 35 of this application. It is the case of the prosecution that employees of the petitioner company were not paid their wages as per the settlement referred to hereinabove. The said fact was brought to the notice of the Assistant Commissioner of Labour by Ahmedabad Nagar Employees Union. Moreover, the said union had also filed Special Civil Application No. 7019/96 as the Commissioner of Labour, Gujarat State, was not taking any action against the petitioner for non-compliance of the settlement referred to hereinabove. In the said writ petition, by an order dated 19th September 1996, this Court had directed the Commissioner of Labour to hear the concerned parties and to take an appropriate decision. In pursuance of the said direction given by this Court, the Commissioner of Labour had taken a decision to initiate legal action against the present petitioner under provisions of sec. 29 of the Industrial Disputes Act. Before taking the said decision, a representation made by the petitioner company dated 14th October 1996 was duly considered by the office of the Commissioner of Labour, Gujarat State.

4. Learned Advocate Shri K.M. Patel appearing for the petitioner has submitted that filing of the complaint is nothing but an abuse of process of law for the reason that the petitioner company was not a member of CMA at the relevant time when the settlement amongst the CMA and various labour unions was arrived at. He has further submitted that the settlement referred to hereinabove was signed before the Joint Commissioner of Labour (Central), New Delhi, in conciliation proceedings admitted on 11th July 1996 before the Joint Labour Commissioner (Central) and Dy. Chief Labour Commissioner (Central), New Delhi. It has been submitted by Shri Patel that as the conciliation proceedings were before the Joint Chief Labour Commissioner (Central) and as the settlement was arrived at in the said conciliation proceedings, if any action is to be taken with regard to breach of the said settlement, the appropriate government would be the Central Government and not the State Government as provided under sec. 34 of the Industrial Disputes Act

and therefore the complaint is not maintainable.

5. It has been thereafter submitted by Shri K.M. Patel that during pendency of the present proceedings, the petitioner company had arrived at a settlement with its employees whereby the wage structure has been revised. Ld. Advocate Shri Mishra appearing for Ahmedabad Nagar Employees Union which represents the employees of the petitioner company has fairly submitted that submission of Shri Patel with regard to entering into a settlement with employees of the petitioner company is correct. It has been submitted by both the learned advocates that terms of the said settlement are overall much beneficial to the employees and they are more beneficial to the employees of the company than the settlement which has been referred to in the complaint. Thus, it is an admitted fact that by virtue of the settlement which has been arrived at by the petitioner company with its employees during pendency of this petition on 23rd May 1998 is more beneficial to its employees and the said settlement has been willingly approved by almost all the employees of the petitioner company.

6. In view of the above-referred development and increase in wages, learned advocate Shri Mishra appearing for Ahmedabad Nagar Employees Union has submitted that continuation of criminal proceedings against the petitioner company would not be in the interest of industrial peace and harmony. It has also been submitted by ld. advocate Shri Patel that the employees of the company are much happy with the revised wage structure as employees of the petitioner company are getting an overall better remuneration than those who are employed by other companies manufacturing cement. Ld. APP Shri K.T. Dave appearing for the respondent-State has fairly submitted that if industrial peace and harmony is maintained, the authorities, under provisions of the Industrial Disputes Act, may not like to disturb the same by continuing the criminal proceedings against an employer who is giving more remuneration to its employees than those employers who are in the same industry. He has however clarified that though there is reply to the contentions raised by ld. advocate Shri Patel for the petitioner, so as to see that industrial peace is maintained and so as to secure the ends of justice, he would not make any effort to see that the employer who is paying relatively more remuneration to its employees is faced with criminal prosecution.

9. In view of the above-referred peculiar facts and circumstances of the case and developments in the matter,

it would be just and proper to quash the proceedings initiated in pursuance of Criminal Case No.142/97 in the court of learned Chief Judicial Magistrate so as to secure the ends of justice.

10. In the result, this application is allowed and proceedings pending in the court of learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur in Criminal Case No. 142/97 are quashed. Rule is made absolute.

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